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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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YOUNG & THOMPSON
745 SOUTH 23RD STREET 2ND FLOOR
ARLINGTON, VA 22202

EXAMINER

PIERCE, JEREMY R

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 04/04/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/856,300

Examiner

Jeremy R. Pierce

Applicant(s)

MAGNUSSON, INGBRITT

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 10 February 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 22-43 is/are pending in the application.
- 4a) Of the above claim(s) 30-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 22-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 6) ☐ Other _____

DETAILED ACTION

Election/Restrictions

1. Applicant's traversal of the Restriction has been considered. Applicant is correct in that this is a national phase of an international application, and PCT Rules concerning unity of invention should apply. The Examiner now sets forth the Lack of Unity requirements.

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 22-29, drawn to a nonwoven fabric.

Group II, claims 30-32 and 43, drawn to a method of producing a nonwoven fabric and the fabric produced as a result of that method.

Group III, claims 33-41, drawn to an absorbent article.

3. The inventions listed as Groups I, II, and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The special technical feature of Group II is an open structure of the fibrous web, which is not present in Groups II or III. The special technical feature of Group III is a fastener system that includes female and male components for mutual coaction, which is not present in

Art Unit: 1771

Groups I or II. Because the groups lack the same special technical feature, restriction is appropriate.

4. Claim 42 is non-statutory because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966). Claim 42 cannot be classified, and since it is non-statutory, it is not included in any of the above groups.

5. Applicant's election of Group I from Paper No. 3 will be accepted as the election for the same restriction set forth according to PCT Rules.

Information Disclosure Statement

6. The information disclosure statement filed in Paper No. 4 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. Specifically, no copies of references AH through AP are present in the application. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 1771

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 22, 23, 25, 27, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by LeVan (U.S. Patent No. 4,999,232).

LeVan disclose a stretchable fibrous batting comprising bicomponent fibers functional fibers and binder fibers (column 2, lines 23-33). The fabric is created by carding (column 4, line 20) and needle-punching (column 3, line 61). With regard to claim 23, the functional fiber may be formed of polyesters or polyolefins (column 2, lines 49-62). With regard to claim 25, the functional fibers are side-by-side and spiral upon heating (column 2, lines 43-49). With regard to claims 27 and 29, the binder fibers may comprise between 10 and 20% by weight of the fabric and may themselves be bi-component fibers (column 4, lines 53-57).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 24, 26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeVan in view of Kwok (U.S. Patent No. 5,618,364).

With regard to claims 24 and 26, LeVan do not teach using two different types of functional fibers, although it is cited that the functional fibers may be curled, spiraled, or

crimped (column 4, line 68 –column 5, line 1). Kwok teaches that improved loft may be achieved in polyester fiberfill when using crimped fibers along with helical fibers in a nonwoven fabric (column 3, lines 1-14). It would have been obvious to one having ordinary skill in the art to include crimped polyester fibers along with the helical ones in the nonwoven fabric of LeVan in order to improve the loft of the fabric, as taught by Kwok. With regard to claim 24, Kwok teaches the spiral fiber has a denier of 9, whereas the crimped fiber denier varies (column 8, lines 1-22). With regard to claim 28, Kwok teaches that the crimped staple fiber may comprise 40% of the fabric and the helical fiber may comprise 30% of the fabric (column 3, lines 1-14). In such an instance, the spiral fiber would comprise 43% of the functional fibers.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703) 605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

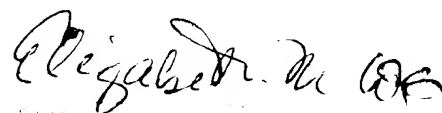
Art Unit: 1771

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jeremy R. Pierce
Examiner
Art Unit 1771

March 27, 2003


Elizabeth M. OR
Patent Examiner